

Court of Appeal, Third Appellate District – No. C050115

S135819

IN THE SUPREME COURT OF CALIFORNIA

En Banc

INDEPENDENT ENERGY PRODUCERS ASSOCIATION et al., Petitioners,

v.

BRUCE MCPHERSON as Secretary of State etc., Respondent;

ROBERT FINKELSTEIN et al., Real Parties in Interest.

Petition for review GRANTED.

The stay issued by the Court of Appeal as part of its July 22, 2005, decision, restraining the Secretary of State from taking any steps, pending the finality of the Court of Appeal's decision, to place Proposition 80 in the ballot pamphlet or on the ballot of the special election to be held on November 8, 2005, is vacated. As the Court of Appeal recognized, California authorities establish that "it is usually more appropriate to review constitutional and other challenges to ballot propositions or initiative measures after an election rather than to disrupt the electoral process by preventing the exercise of the people's franchise, in the absence of some clear showing of invalidity." (*Brosnahan v. Eu* (1982) 31 Cal.3d 1, 4.) Because, unlike the Court of Appeal, at this point we cannot say that it is clear that article XII, section 5, of the California Constitution precludes the enactment of Proposition 80 as an initiative measure, we conclude that the validity of Proposition 80 need not and should not be determined prior to the November 8, 2005 election. Accordingly, the Secretary of State and other public officials are directed to proceed with all the required steps to place Proposition 80 in the ballot pamphlet and on the ballot of the special election to be held on November 8, 2005. After that election, we shall determine whether to retain jurisdiction in this matter and resolve the issues raised in the petition.

George
Chief Justice

Kennard
Associate Justice

Baxter
Associate Justice

Werdegar
Associate Justice

Chin
Associate Justice

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Moreno
Associate Justice

Associate Justice

7/27/2005